IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 474/2005

Ganapati Dnyanu Jagadle. ..... Petitioner.

V/s

Rajaram Rau Patil and ors. ..... Respondents.

Mr. P. A. Kholkar, Advocate for the petitioner.

Mr. Mandar Khandeparkar, Advocate for respondents No.1 and 2.

Mr. Guru Shirodkar, Addl. Govt. Advocate for respondent No.3.

CORAM : A.P. LAVANDE, J.

DATE : 9TH MARCH, 2006.

P.C.

Heard Mr. Kholkar, the learned Counsel for the petitioner, Mr. Khandeparkar, the learned Counsel for respondents No.1 and 2 and Mr. Shirodkar, the learned Addl. Govt. Advocate for respondent No.3.

2. By this petition, the petitioner takes exception to the Order dated 5th October, 2005 passed by the Adhoc Addl. District Judge, Fast Track Court II, South Goa, Margao in Civil Suit No.123 of 2004 by which the trial Court deleted the issue No.1 regarding

tenancy. Issue No.1, as originally framed, reads as under :

> Whether the plaintiff proves that he is co-tenant of 1/3rd interest in the suit property along with defendants No. 1 & 2 ?

Initially, the trial Court framed the issue of tenancy and by the impugned order the said issue has been deleted. In the impugned order, the trial Court has given finding that the petitioner who is the original plaintiff has nowhere pleaded that he is the tenant of a particular person to whom the land belongs. Mr. Kholkar, the learned Counsel appearing for the petitioner, when called upon to point out as to where the petitioner has made averments about the ingredients of tenancy, Mr. Kholkar fairly conceded that in the plaint there are no such pleadings. A bare perusal of the plaint filed by the petitioner discloses that the plaintiff claims to be a partner in cultivation of respondents No.1 and 2 as they could not manage the cultivation. Even after considering all the other averments made in the plaint, it is clear that in the plaint, the petitioner has nowhere pleaded the ingredients of tenancy. That being the position, in my opinion, the trial Court was absolutely justified in deleting the issue of tenancy. The issues are framed on the basis of the pleadings of the parties. If the Court frames an issue inadvertently, the Court is entitled to delete the the same at a later stage, of course, after giving opportunity to the parties. In the present case, I do not find any jurisdictional

error or any error apparent on the face of the record, warranting interference in the impugned order in exercise of writ jurisdiction. The learned Counsel for the petitioner has placed reliance on the Judgments of this Court in the case of **Rajaram Totaram Patel v. Mahipat Mahadu Patel and ors**., reported in AIR 1967 Bombay 408 and in the case of **Madhao Tatya Sonar v. The Maharashtra Revenue Tribunal, at Nagpur and ors.,** reported in AIR 1971 Bombay 106. Having regard to the pleadings in the plaint, in my opinion, the ratio laid down in both the said Judgments is clearly not attracted to the present case.

3. In the result, therefore, I do not find any merit in the petition. The petition is, therefore, rejected.

A.P. LAVANDE, J.

ssm.